



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL

MAY 16 2007

Mr. Jack Orchulli

[REDACTED]
Darien, CT 06820-3031

RE: MUR 5728
Jack Orchulli

Dear Mr. Orchulli:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on April 6, 2006, the Federal Election Commission ("the Commission") found reason to believe that you violated 2 U.S.C. §§ 434(a)(6)(B) (iii) and (iv).

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations of 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv) have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible. The General Counsel's brief and any brief that you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

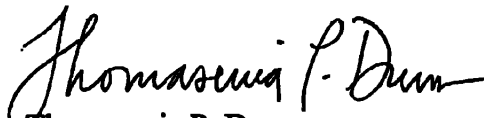
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Please be advised that you have the opportunity to request an oral hearing before the Commission at this stage of the enforcement process. *See* Commission's "Policy Statement Establishing a Pilot Program for Probable Cause Hearings," 72 Fed. Reg. 7551 (Feb. 16, 2007). Hearings are voluntary and no adverse inference will be drawn by the Commission based on a respondent's request or waiver of such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission may or may not grant a request for a hearing.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Delbert Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomasenia P. Duncan". The signature is fluid and cursive, with the first name being the most prominent.

Thomasenia P. Duncan
General Counsel

Enclosure
Brief

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of)

3)
4 Jack Orchulli) MUR 5728
5)
6)
7)

8 **GENERAL COUNSEL'S BRIEF**
9

10 **I. INTRODUCTION**

11 On April 6, 2006, the Federal Election Commission ("Commission") found reason to
12 believe that Jack Orchulli violated 2 U.S.C. § 434(a)(6)(B)(iii) by failing to timely file an initial
13 notification of personal expenditures of \$540,000 after exceeding the threshold reporting
14 requirement and 2 U.S.C. § 434(a)(6)(B)(iv) by failing to timely file three additional notifications
15 of personal expenditures totaling \$500,000. Based on the following factual and legal analysis,
16 this Office is prepared to recommend that the Commission find probable cause to believe that
17 Jack Orchulli violated 2 U.S.C. § 434(a)(6)(B)(iii) and (iv).

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 In January 2004, Jack Orchulli filed an FEC Form 2, Statement of Candidacy, in
20 connection with his candidacy for United States Senate from Connecticut. On this form,
21 Mr. Orchulli indicated that he intended to spend \$500,000 above the threshold amount in the
22 general election from his personal funds.¹

23 Between May 14, 2004 and October 11, 2004, Mr. Orchulli made a total of \$1,040,000 in
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¹ There was no Republican primary for U.S. Senate in Connecticut in 2004. In that state, a political party endorses a party candidate at its party convention. The Republican convention was held on May 8, 2004 and Jack Orchulli was endorsed as the party nominee. A primary election is only held if a qualified challenger to the party-endorsed candidate receives 15% of the delegate votes during the party convention and files for a primary or, if after the convention, a challenger files the required number of petitions to qualify for access to a primary ballot. Otherwise, the party-endorsed candidate is the party nominee.

1 loans to the Committee, all of which were designated for the general election. These loans were
2 all reported on the appropriate quarterly disclosure reports. Mr. Orchulli made loans to Friends
3 of Jack Orchulli (the "Committee") of \$30,000 each on May 14, 2004, June 4, 2004 and June 16,
4 2004, respectively. On June 23, 2004, he loaned an additional \$450,000 to the Committee,
5 bringing his personal loan total to \$540,000, and triggering and exceeding the reporting threshold
6 requirement of \$511,840, which required the filing of a 24 Hour Notice of Expenditure from
7 Candidate's Personal Funds ("FEC Form 10"). Thereafter, Mr. Orchulli loaned the Committee
8 \$250,000 on September 13, 2004, \$100,000 on September 16, and \$150,000 on October 11,
9 2004. Neither Mr. Orchulli nor the Committee timely filed an initial or additional FEC Form
10 10's disclosing these expenditures from personal funds.

11 On October 7, 2004, the Commission sent a Request for Additional Information to the
12 Committee requesting an explanation for the absence of the initial FEC Form 10 in connection
13 with the candidate's expenditure of personal funds in the form of loans totaling \$540,000 as of
14 June 23, 2004. On October 22, 2004, the Committee filed an FEC Form 10 regarding this
15 expenditure. On October 22, 2004, the Committee also filed an FEC Form 10 for each of the two
16 candidate loans made in September 2004 and for the October 11, 2004 candidate loan.²

17 A Senate candidate or his or her principal campaign committee must notify the Secretary
18 of the Senate, the Commission and each opposing candidate when the candidate makes an
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² In a cover letter accompanying each of the notification forms, the Committee states that it faxed a copy of the FEC Form 10 to the Secretary of the Senate and to each of Mr. Orchulli's opponents. Thus, it appears that the Secretary of the Senate and Mr. Orchulli's three opponents did not receive any FEC Form 10's until October 22, 2004. In a March 19, 2007 letter to staff of this Office, Mr. Orchulli states that his campaign contacted all of the campaigns every time he made a contribution, but he has not presented any evidence demonstrating this contact.

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1 expenditure from personal funds exceeding two times the threshold amount.³ 2 U.S.C.
2 § 434(a)(6)(B)(iii); 11 C.F.R. § 400.21(a). This notification must be received within 24 hours of
3 the time such expenditure is made. *Id.* For each additional expenditure of \$10,000 or more, the
4 candidate is required to notify the Secretary of the Senate, the Commission and each opposing
5 candidate in an FEC Form 10 filing within 24 hours of the time such expenditure is made, and
6 must include, among other things, the date and the amount of the expenditure and the total
7 amount expended as of the date of the filing. *See* 2 U.S.C. §§ 434(a)(6)(B)(iv) and (v); 11 C.F.R.
8 § 400.22(a). The candidate is responsible for ensuring that the FEC Form 10 is filed in a timely
9 manner. *See* 11 C.F.R. § 400.25. *See e.g.*, MUR 5648 (Broyhill) (Commission found probable
10 cause to believe that candidate violated personal funds notification requirement); MURs 5607
11 (Socas) and MUR 5730 (Charles Taylor for Congress) (Commission found reason to believe that
12 candidate violated personal funds notification requirement).

13 Mr. Orchulli's \$450,000 loan on June 23, 2004 caused his total personal expenditures for
14 the general election to exceed \$511,840. By exceeding this amount, the Committee and
15 Mr. Orchulli were required to file an FEC Form 10 with the Commission and send copies to the
16 Secretary of the Senate and to the candidate's opponents within 24 hours of making the
17 expenditure, or by June 24, 2004. The Committee did not file the initial FEC Form 10 until
18 October 22, 2004, 120 days late. Therefore, this Office is prepared to recommend that the
19 Commission find probable cause to believe that Jack Orchulli violated 2 U.S.C.

³ An expenditure from personal funds includes loans by the candidate to his authorized committee using personal funds. *See* 2 U.S.C. § 434(a)(6)(B)(i); 11 C.F.R. § 400.4(a)(2). The threshold amount for United States Senate candidates is the sum of \$150,000 plus an amount equal to the voting age population of the state multiplied by 4 cents. *See* 11 C.F.R. § 400.9. In the case of Connecticut in 2004, the threshold amount was \$255,920 (\$150,000 + (2,648,000 x .04)). Thus, an amount that is two times the threshold amount is \$511,840 (\$255,920 x 2).

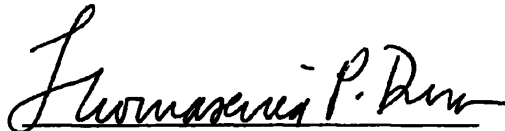
1 § 434(a)(6)(B)(iii).


2 In addition, the Committee and Mr. Orchulli failed to timely file additional FEC Form
3 10's regarding Mr. Orchulli's loans on September 13, 2004, September 16, 2004 and October 11,
4 2004, each of which was in excess of \$10,000. The Committee filed the FEC Form 10's for
5 these loans on October 22, 2004, 38 days, 35 days and 10 days late, respectively. Therefore, this
6 Office is prepared to recommend that the Commission find probable cause to believe that Jack
7 Orchulli violated 2 U.S.C. § 434(a)(6)(B)(iv).

8 **IV. GENERAL COUNSEL'S RECOMMENDATION**

- 9 1. Find probable cause to believe that Jack Orchulli violated 2 U.S.C. § 434(a)(6)(B)(iii) and
10 (iv).

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14 May 15, 2007
15 Date

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Thomasenia P. Duncan
General Counsel


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